



# STATE OF INDIANA

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*Via email to [carrie@indianatourismassociation.com](mailto:carrie@indianatourismassociation.com)*

## **Re: Informal Opinion 18-INF-13; Sharing of Innkeeper's Tax Information**

Dear Ms. Lambert:

This informal opinion is in response to your inquiry concerning the disclosability of innkeeper's tax revenue for individual hotels. In accordance with Indiana Code section 5-14-4-10(5), I issue the following informal opinion to your inquiry.

### **BACKGROUND**

The Indiana Tourism Association ("ITA") is a trade association that advocates for tourism investment and promotion as economic development in the State of Indiana. Toward that end, ITA is seeking clarification on a 2009 informal opinion<sup>1</sup> issued by Public Access Counselor Heather Neal, which addressed whether the Jay County Treasurer could lawfully disclose records stating the amount of innkeeper's tax remitted by individual hotels in the county. In that case, Jay County Treasurer Robin Alberson received a public records request for a breakdown of which hotels pay what amount in innkeeper's tax. Alberson believed she could disclose the total amount innkeeper's tax the county collected for the year but not the amount remitted by individual hotels.

Counselor Neal agreed.

In reaching her conclusion, Neal relied, in part, on Indiana Code Section 6-8.1-7-1(a), which prohibits the Indiana Department of Revenue ("DOR") and "its employees, former employees, counsel, agents, or any other person" from disclosing certain tax-related information. The information barred from disclosure includes "the amount of tax paid by any taxpayer" and "other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes..." Counselor Neal also cited three other

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<sup>1</sup> *Informal Inquiry*, 09-INF-13 (2009).

statutes<sup>2</sup> each defining terms embedded in Indiana Code Section 6-8.1-7-1(a) to conclude that records disclosing the amount of innkeeper’s tax remitted by individual hotels are confidential; and therefore, the Access to Public Records Act prohibited the treasurer from disclosing the records.<sup>3</sup>

Notably, Counselor Neal acknowledged that she found no prohibition on disclosing the total aggregate amount of innkeeper’s tax collected by the county. The exception would be, of course, a county with an innkeeper’s tax and only one hotel.<sup>4</sup>

The ITA believes the existing law on this issue is ambiguous and allows room for discussion about whether the records of innkeeper’s tax remitted by individual hotels is disclosable under the law. Essentially, ITA wants the local commissions<sup>5</sup> responsible for administering the funds received from an innkeeper’s tax to have access to the amount of tax remitted by each individual hotel instead of the aggregate total.

In sum, ITA seeks clarification about whether Counselor Neal’s opinion still reflects the opinion of this Office as it pertains to the disclosability of innkeeper’s tax remittances of individual hotels as it pertains to county treasurers.

## DISCUSSION

### 1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) expressly states that “it is the public policy of the [State of Indiana] that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1. APRA generally governs access to public records in Indiana. Unless an exception applies, public records are presumptively disclosable under the Act and the burden of proof for nondisclosure is on the public agency. *Id.*

Under APRA, *public record* means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). APRA has both mandatory and discretionary exceptions to disclosure.<sup>6</sup> Notably, under Indiana Code Section 5-14-3-4(a)(1), public records “declared

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<sup>2</sup> Ind. Code § 6-8.1-1-1 (defining “Listed Taxes” or “Taxes”); Ind. Code § 6-8.1-1-3 (defining “Person”); and Ind. Code § 6-8.1-1-5.5 (defining “Taxpayer”).

<sup>3</sup> Indiana Code section 5-14-3-4(a)(1) prohibits a public agency from disclosing records declared confidential by state statute.

<sup>4</sup> This office is not privy to any information suggesting this scenario exists in Indiana.

<sup>5</sup> Ind. Code § 6-9-29-5(a)(1), to –(6).

<sup>6</sup> Ind. Code §§ 5-14-3-4(a) and (b).

confidential by state statute” are not “subject to disclosure unless access is required by state or federal statute or access is ordered by a court under the rules of discovery.” In other words, APRA prohibits an agency from disclosing records that are declared confidential by another state statute.

Here, the primary question is whether the records that indicate the amount of innkeeper’s tax remitted by individual hotels have been declared confidential by statute. If so, the agency is prohibited from disclosing the records under APRA.

## 2. County Innkeeper’s Tax

All 92 counties in Indiana are authorized to impose an innkeeper’s tax in accordance with the Uniform Innkeeper’s Tax Act codified under Indiana Code Section 6-9-18 or through specific enabling statutes scattered throughout Indiana Code Section 6-9. Currently, 75 counties levy an innkeeper’s tax.

In general, a county may levy an innkeeper’s tax on “any person engaged in the business of renting or furnishing, for periods of less than thirty (30) days, any room or rooms, lodgings, or accommodations in any hotel, motel, boat motel, inn, college or university memorial union, college or university residence hall or dormitory, or tourist cabin located in the county.” Ind. Code § 6-9-18-3(a).

Indiana Code Section 6-9-18-3(d) authorizes a county fiscal body to adopt an ordinance to require that the innkeeper’s tax to be paid monthly to the county treasurer. What is more, if a county adopts such an ordinance, the county treasurer has the same rights and powers with respect to collecting and refunding the county innkeeper’s tax as the department of state revenue. *See* Ind. Code § 6-9-29-3(a). If, however, a County does not adopt an ordinance requiring remittance to the treasurer, the “tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected under IC 6-2.5.” *Id.*

Indiana Code Section 6-9-18-3(e) provides:

All of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration are applicable to the imposition and administration of the tax imposed under this section except to the extent those provisions are in conflict or inconsistent with the *specific provisions of this chapter* or the requirements of the county treasurer. If the tax is paid to the department of state revenue, the return to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may, by rule, determine.

The administration of the county innkeeper’s tax is also governed by statute.<sup>7</sup>

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<sup>7</sup> Ind. Code §§ 6-9-29-1 to -9.

Regardless of the collection point, innkeeper's tax returns or forms are public records for purposes of APRA. In this case, the issue is whether those forms are *disclosable* upon request under the Act.

As set forth above, the administration of the innkeeper's tax is governed by Indiana Code section 6-9-29. It is worth mentioning that chapter 29 does not expressly declare the innkeeper's tax forms submitted by individual hotels confidential. Even so, Indiana Code section 6-9-29-4 provides:

Upon a request by a county auditor or treasurer, the department of state revenue shall provide summary data regarding innkeeper's tax collections for the county. *This data may not include any confidential information.* The department shall provide the summary data within ten (10) business days after the request is made.

(emphasis added). Thus, even though chapter 29 does not specifically define "confidential information" it does prohibit the DOR—and by extension a county treasurer—from including such information in the summary data regarding innkeeper's tax it is required to provide.

To complicate matters further, a 2015 opinion by the Indiana Tax Court<sup>8</sup> distinguished county treasurers from the Department of Revenue and declared them to be mutually exclusive. This could be read to divorce Counselor Neal's 2009 opinion from its application to county treasurers.

What is relatively clear is that the General Assembly did not intend for individual tax remittance information to be publicly available. The question is whether it may be shared amongst certain public agencies on a need-to-know basis and who those entities may be. It should be noted that an agency who receives confidential information from another public agency must also keep that information confidential pursuant to Indiana code section 5-14-3-6.5.

Therefore, enough ambiguity exists amongst statutory interpretation to seek possible clarification from the General Assembly. This Office is an authority on neither tax policy matters nor the finer points of the tourism industry. It appears prior interpretation from this Office was absolute when the situation may now warrant further qualification.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt  
Public Access Counselor

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<sup>8</sup> *Blue Chip Casino, LLC v. LaPorte County Treasurer*, 27 N.E.3d 1198 (2015).